

TRADE

Prohibited Subsidies and Related Matters

**Agreement Between the
UNITED STATES OF AMERICA
and the SOCIALIST REPUBLIC OF
VIETNAM**

Effected by Exchange of Letters at
Hanoi May 31, 2006



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . . the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

SOCIALIST REPUBLIC OF VIETNAM

**Trade: Prohibited Subsidies and
Related Matters**

*Agreement effected by exchange of letters
at Hanoi May 31, 2006;
Entered into force May 31, 2006.*



MINISTRY OF TRADE

THE SOCIALIST REPUBLIC OF VIETNAM

31 MAY 2006

The Honorable Karan Bhatia
Deputy U.S. Trade Representative
Washington, DC 20508

Dear Honorable,

I have the honor to refer to understandings reached between the Government of the Socialist Republic of Viet Nam (Viet Nam) and the Government of the United States of America (United States) (collectively "the Parties") during bilateral negotiations on Viet Nam's accession to the World Trade Organization (WTO). In its WTO accession package, Viet Nam will include commitments on the elimination of prohibited subsidies and related matters as follows.

1. The representative of Viet Nam stated that no disbursement or subsidy benefit pursuant to Decision No. 55/2001/QD-TTg had been provided since May 31, 2006, and that Decision No. 55/2001/QD-TTg would be repealed as of the date of accession. He also confirmed that Viet Nam would eliminate all prohibited subsidies (*i.e.*, subsidies contingent upon export performance or the use of domestic over imported goods) to the textile and garment industries, including but not limited to investment incentives contingent upon export performance for domestic businesses, investment incentives contingent upon export performance for foreign-invested enterprises, export promotion subsidies contingent upon export performance and trade promotion subsidies contingent upon export performance, as of the date of accession. Viet Nam would notify Members, and provide further information on request, when it took any action to eliminate prohibited subsidies, including repeal of Decision 55/2001/QD-TTg.

2. The representative of Viet Nam confirmed that, as of the date of its accession to the WTO, no prohibited subsidies would be provided to new beneficiaries pursuant to the program that provides investment incentives contingent upon export performance for domestic businesses and the program that provides investment incentives contingent upon export performance for foreign-invested enterprises. He further confirmed that over a five-year period beginning on the date of accession, benefits to current beneficiaries under these two programs would be phased-out. Further, the representative of Viet Nam confirmed that the program that provides investment incentives contingent upon export performance for domestic businesses and the program that provides investment incentives contingent upon export performance for foreign-invested enterprises would be eliminated completely no later than 5 years from the date of Viet Nam's accession to the WTO.
3. The representative of Viet Nam further confirmed that all other prohibited subsidies would be eliminated as of the date of accession and that any other remaining subsidy programs would be brought into conformity with the WTO Agreement on Subsidies and Countervailing Measures. Viet Nam would provide notice of measures eliminating these programs and any other prohibited subsidies to the WTO. He also confirmed that, by the date of accession, a subsidy notification, in accordance with Article 25 of the Agreement, would be provided to the Committee on Subsidies and Countervailing Measures.

The United States will monitor Viet Nam's compliance with its commitments on subsidies. In addition, Viet Nam would notify the United States of any new program providing subsidies to the Textile and Garment Industries within 45 days of its promulgation.

The Agreement Relating to Trade in Cotton, Wool, Man-Made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products, as extended by Memorandum of Understanding (Bilateral Textile Agreement) between the United States and Viet Nam will expire on the date of Viet Nam's accession to the WTO and quotas under the Agreement will be removed as of that date.

If during a period of 12 months after Viet Nam's accession to the WTO, the United States believes that Viet Nam has failed to comply with its commitments set out in paragraph 1 above, the United States will notify Viet Nam and start a 60-day period for consultations with a view to resolving the matter. If the Parties are unable to reach a mutually acceptable resolution of the matter of whether Viet Nam is in compliance with its commitments set out in paragraph 1 above by the end of the 60-day consultation period, the United States is permitted to immediately request arbitration of this matter within the WTO pursuant to Article 25 of the WTO Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU).

The United States and Viet Nam, hereby agree, pursuant to Article 25.2 of the DSU, on the following procedures for the arbitration. The total period for the arbitration is 120 days from the request for arbitration. An arbitrator with knowledge of the WTO Agreement shall issue a binding decision on whether Viet Nam has complied with its commitments set out in paragraph 1 by the end of the 120-day period. The Arbitrator shall provide his determination in writing to the Parties.

If the Arbitrator determines that Viet Nam is in compliance with its commitments set out in paragraph 1, the United States will not impose quotas on imports of textile and garments from Viet Nam. If the Arbitrator determines that Viet Nam has not fully complied with its commitments under paragraph 1, the United States is permitted to impose quotas on imports of the categories of textile and garments from Viet Nam that were covered by the Bilateral Textile Agreement, at the level for each category that was in effect during the last full year that the Agreement was in effect. In the event that the United States imposes quotas, such quotas will be in effect for a maximum period of 12 months from the date the quotas are imposed, or until Viet Nam comes into compliance with its commitments set out in paragraph 1, whichever occurs first.

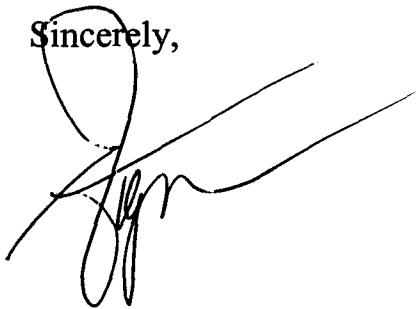
If the Arbitrator does not issue a decision by the end of the 120-day arbitration period, the United States is permitted to impose quotas as described above until the Arbitrator issues his written determination. If the Arbitrator determines that Viet Nam is in compliance with its commitments set out in paragraph 1, the United States will immediately terminate application of these quotas. If the Arbitrator determines that Viet Nam is not in full compliance with its commitments set out in paragraph 1, the quotas will remain in effect for a maximum period of 12 months from the date the quotas are imposed, or

until Viet Nam comes into compliance with its commitments set out in paragraph 1, which ever occurs first.

Pursuant to Article 25.2 of the DSU, the Parties will notify the WTO of this agreement to resort to arbitration upon Viet Nam's accession to the WTO. Viet Nam agrees that it will not bring a dispute on the application of quotas by the United States pursuant to this Agreement, notwithstanding any rights it may have to do so under the WTO Agreement.

I have the honor to request that you confirm by letter in reply that your government shares these understandings. I have the further honor to propose that this letter and your letter in reply confirming these understandings shall constitute an agreement between our two Governments to enter into effect upon the date of Viet Nam's accession to the WTO.

Sincerely,

A handwritten signature in black ink, appearing to be 'Truong Dinh Tuyen', written over a large, loopy initial 'T'.

Truong Dinh Tuyen
Minister of Trade
The Socialist Republic of Viet Nam

EXECUTIVE OFFICE OF THE PRESIDENT
DEPUTY UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 31, 2006

H.E. Truong Dinh Tuyen
Minister of Trade
The Socialist Republic of Vietnam

Dear Minister Truong:

I have the honor to acknowledge receipt of your letter of this date which reads as follows.

I have the honor to refer to understandings reached between the Government of the Socialist Republic of Viet Nam (Viet Nam) and the Government of the United States of America (United States) (collectively "the Parties") during bilateral negotiations on Viet Nam's accession to the World Trade Organization (WTO). In its WTO accession package, Viet Nam will include commitments on the elimination of prohibited subsidies and related matters as follows.

1. The representative of Viet Nam stated that no disbursement or subsidy benefit pursuant to Decision No. 55/2001/QD-TTg had been provided since May 31, 2006, and that Decision No. 55/2001/QD-TTg would be repealed as of the date of accession. He also confirmed that Viet Nam would eliminate all prohibited subsidies (*i.e.*, subsidies contingent upon export performance or the use of domestic over imported goods) to the textile and garment industries, including but not limited to investment incentives contingent upon export performance for domestic businesses, investment incentives contingent upon export performance for foreign-invested enterprises, export promotion subsidies contingent upon export performance and trade promotion subsidies contingent upon export performance, as of the date of accession. Viet Nam would notify Members, and provide further information on request, when it took any action to eliminate prohibited subsidies, including repeal of Decision 55/2001/QD-TTg.
2. The representative of Viet Nam confirmed that, as of the date of its accession to the WTO, no prohibited subsidies would be provided to new beneficiaries pursuant to the program that provides investment incentives contingent upon export performance for domestic businesses and the program that provides investment incentives contingent upon export performance for foreign-invested enterprises. He further confirmed that over a five-year period beginning on the date of accession, benefits to

current beneficiaries under these two programs would be phased-out. Further, the representative of Viet Nam confirmed that the program that provides investment incentives contingent upon export performance for domestic businesses and the program that provides investment incentives contingent upon export performance for foreign-invested enterprises would be eliminated completely no later than 5 years from the date of Viet Nam's accession to the WTO.

3. The representative of Viet Nam further confirmed that all other prohibited subsidies would be eliminated as of the date of accession and that any other remaining subsidy programs would be brought into conformity with the WTO Agreement on Subsidies and Countervailing Measures. Viet Nam would provide notice of measures eliminating these programs and any other prohibited subsidies to the WTO. He also confirmed that, by the date of accession, a subsidy notification, in accordance with Article 25 of the Agreement, would be provided to the Committee on Subsidies and Countervailing Measures.

The United States will monitor Viet Nam's compliance with its commitments on subsidies. In addition, Viet Nam would notify the United States of any new program providing subsidies to the Textile and Garment Industries within 45 days of its promulgation.

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If during a period of 12 months after Viet Nam's accession to the WTO, the United States believes that Viet Nam has failed to comply with its commitments set out in paragraph 1 above, the United States will notify Viet Nam and start a 60-day period for consultations with a view to resolving the matter. If the Parties are unable to reach a mutually acceptable resolution of the matter of whether Viet Nam is in compliance with its commitments set out in paragraph 1 above by the end of the 60-day consultation period, the United States is permitted to immediately request arbitration of this matter within the WTO pursuant to Article 25 of the WTO Understanding on Rules and Procedures Governing the Settlement of Dispute (DSU).

The United States and Viet Nam, hereby agree, pursuant to Article 25.2 of the DSU, on the following procedures for the arbitration. The total period for the arbitration is 120 days from the request for arbitration. An arbitrator with knowledge of the WTO Agreement shall issue a binding decision on whether Viet Nam has complied with its commitments set out in paragraph 1 by the end of the 120-day period. The Arbitrator shall provide his determination in writing to the Parties.

If the Arbitrator determines that Viet Nam is in compliance with its commitments set out in paragraph 1, the United States will not impose quotas on imports of textile and garments from Viet Nam. If the Arbitrator determines that Viet Nam has not fully complied with its commitments under paragraph 1, the United States is permitted to impose quotas on imports of the categories of textile and garments from Viet Nam that were covered by the Bilateral Textile Agreement, at the level for each category that was in effect during the last full year that the Agreement was in effect. In the event that the United States imposes quotas, such quotas will be in effect for a maximum period of 12 months from the date the quotas are imposed, or until Viet Nam comes into compliance with its commitments set out in paragraph 1, which ever occurs first.

If the Arbitrator does not issue a decision by the end of the 120-day arbitration period, the United States is permitted to impose quotas as described above until the Arbitrator issues his written determination. If the Arbitrator determines that Viet Nam is in compliance with its commitments set out in paragraph 1, the United States will immediately terminate application of these quotas. If the Arbitrator determines that Viet Nam is not in full compliance with its commitments set out in paragraph 1, the quotas will remain in effect for a maximum period of 12 months from the date the quotas are imposed, or until Viet Nam comes into compliance with its commitments set out in paragraph 1, which ever occurs first.

Pursuant to Article 25.2 of the DSU, the Parties will notify the WTO of this agreement to resort to arbitration upon Viet Nam's accession to the WTO. Viet Nam agrees that it will not bring a dispute on the application of quotas by the United States pursuant to this Agreement, notwithstanding any rights it may have to do so under the WTO Agreement.

I have the honor to request that you confirm by letter in reply that your government shares these understandings. I have the further honor to propose that this letter and your letter in reply confirming these understandings shall constitute

an agreement between our governments to enter into effect upon the date of Viet Nam's accession to the WTO.

I have the honor to confirm that my government shares these understandings and that your letter and this letter in reply shall constitute an agreement between our two Governments to enter into effect upon the date of Viet Nam's accession to the World Trade Organization.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karan Bhatia', with a stylized flourish at the end.

Karan Bhatia